

Lewis E. Byrd III

Case No. 17-CV-191-JDP.

Plaintiff,

v.

Brandon Arnez,

Defendant.

Now comes the plaintiff Lewis E. Byrd, III. The above referenced case, respondent to a motion for summary judgment by Defendant Brandon Arnez, respondent in the above referenced case, who moves this court for an order for the taking of discovery, motions for summary judgment in civil cases governed by USC 56, 56 requires respondents to a motion for summary judgment to respond to each fact alleged in said motion disputing or affirming each. Respondents may also submit its own proposed finding of facts. USC 56 (D) states: when facts are unavailable to the non-movant, if a non-movant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its position, the court may:

1) Defer considering the motion or deny it

2) Allow time to obtain affidavits or declarations or to the discovery; or

3) issue any other appropriate order

The movant for the motion for summary judgment has in his motion Brief alleged certain facts, which Mr. Byrd is unable to properly consider, reply to without discovery. There are certain facts to which Byrd assents and certain facts which Byrd disputes from the record. However, Defendant Arnez has raised, as part of his argument (see Defendants Brief p. 7 sec 1.) "From the perspective of a reasonable officer. " what makes a Law Enforcement officer reasonable in conduct is, in significant part, his/her training and relevant law enforcement department standards, policies and best practices, further, A Law Enforcement officer is more or less likely to have been reasonable in behaviour based on past Law Enforcement experiences, i.e. his/her service records relating to like or relevant incidents

together with any findings or evaluations for an incident instant or previous incident(s), like or relevant.

Arnez has alleged facts pertaining to Mr. Byrd's actions, inter alia, 1) Ramming a law enforcement vehicle behind Byrd. Reasoning from Byrd's alleged reversing of his vehicle to ram the law enforcement vehicle to Byrd's rear, then driving his (Byrd's) vehicle at a law enforcement officer to portray Byrd as reckless and threatening. Byrd requires any and all, dash cam and body cam video of the incident, any and all dispatcher, radio and cell phone logs, records and recordings for the time span of the event and copies of any and all eye witness statements, depositions or law enforcement notebook or other written entries concerning the event including but not limited to eye witness accounts. 2) Byrd's rate of travel as 80-90 mph and or high speed, relying on Byrd's alleged speed to argue from *Plumbhoff v. Rickard* 134 S. Ct. 2012, 2020 (2014) and *Marion v. City of Corydon, Indiana*, 559 F.3d 700, 705 (7th Cir. 2009). Defendant Arnez again relies on Mr. Byrd's alleged rate of speed is reasoning from *Scott v. Harris* 550 U.S. 372, 386, 127 S. Ct 1769, 1779 (2009). Byrd requires, in addition to the discovery in item 1 above, all radar records made of Byrd's vehicle at the time of the shooting.

Discovery request in detail:

- 1) All internal documents including, but not limited to: training manuals, policy and practices materials, whether in physical or electronic form containing the phrases or pertaining to the subject of: a) high speed chase or pursuit, exceeding posted speed limits (with reference to pursuing or following a suspect in a motor vehicle, criteria for initiating and or terminating a high speed chase or pursuit, deployment of tire spikes or any other form of suspect vehicle interdiction; b) use of deadly force firing or discharge of a service weapon; c) multi-jurisdictional communication and/or cooperation in locating and/or apprehending suspects in a motor vehicle whether high speed is involved or not; and d) use of Dash or Body cam video equipment both manually and automatically.
- 2) Any and all Dash cam or body cam video of any members of law enforcement or their vehicle or any vehicle present or in any way involved in the underlined matter.
- 3) Any and all sound files or notes pertaining to or transcriptions of any and all electronic means of communication (radio, cell phone) in any way involved in the underlining matter, including dispatcher logs, records, transcriptions or recordings.
- 4) Service records of all responding law enforcement officers to be examined for a) use of deadly force, discharge of service weapon and/or b) high speed pursuit or chase or apprehensions of suspect(s) in a motor vehicle. Determining whether any such incidents resulted in any warning, oral or written or any disciplinary action or procedural disposition including terms and cause for end of employment.
- 5) All reports, transcripts, note, radar of speed of the 2007 Buick that Sagwan Butcher M.R. Byrd girlfriend who was driving the "RED" vehicle that was apprehended for a high speed chase in Sumner county and All arrest reports for all officers involved,

~~(Facts)~~

these items of discovery facts are material ipso facto Defendant Arnez's assertion of a reasonable officer standard. See Defendants summary Judgment page 7 section 1 paragraph 1 Line 8, also see page 10 paragraph 1 Line 4.

That these items of discovery facts are material and necessary follows from the law "To survive summary judgment the non-movant must merely show that reasonable minds could differ as to the import of the evidence" *RB Ventures Ltd v. Shane* 112 F 3d 54, 59 (2 circuit court of appeals, 1997). To dispute or assent to the facts, the facts (evidence) must be known, i.e. present on the record. Discovery is required to bring in these necessary facts.

That courts should err on the side of due and full deliberation, in considering a motion for summary judgment is seen in *Anderson v. Liberty Lobby* (477 45 @ 255, 106 Sct @ 2513). "neither do we suggest that the trial courts should act other than with caution in granting summary judgment."

order for Discovery to be served on

- 1) Brandon Arnez (for motion of summary judgment)
- 2) Todd Kruger (as party in fact to above referenced case)
- 3) William Zirk (as party in fact)
- 4) Grover Wooten (as party in fact)
- 5) Ryan Williams (as party in fact)
- 6) Lawrence Howell (as party in fact)

## Qualified Immunity

Byrd does dispute Arnez's reasoning from *Plumhoff v. Rickard* 134 S. Ct. at 2021 viz. Qualified Immunity as to high speed pursuit or use of deadly force. To terminate a high-speed car chase that threatens the lives of innocent bystanders "(*Scott v. Harris* 550 U.S. 372 at 381, 127 S.Ct. 1769, 167 L.ed.2d 688) Byrd disputes the fact(s) upon which Defendant Arnez's application of *Scott*, *supra* depends.

The alleged fact(s) of Byrd's rate of speed and reckless driving, *inter alia* ramming a law enforcement vehicle a few feet ~~in front of~~ <sup>behind</sup> him from the front are disputed. In *Plumhoff*, *supra*, which Arnez cites in arguing for qualified immunity, the Supreme Court ~~court~~ held in "*Saucier*" that "the first inquiry must be whether a constitutional right would have been violated on the facts alleged." ("*Saucier v. Katz*, 553 U.S. 194, 200; 121 S.Ct. 2151, 150 L.ed.2d 272 (2001)) Byrd disputes the alleged facts of reckless and high speed driving as argued and requires the discovery requested to properly consider and reply i.e., dispute, to their use. Byrd notes that in *Scott*, *supra*, there was a videotape of the chase. Byrd seeks, from all participating law enforcement jurisdictions, production of any and all dash cam and body cam video for the interval of time covering first notice and report of Byrd's vehicles as of interest to the conclusion of the incident. To properly consider Byrd further requests any and all eye witness statements, and or dispositions taken in this matter including, but not limited to, Mr. George Schurmer, the occupant of the car present at or near the Hillsboro Equipment Company Entrance at the time of the shooting.

Conclusion

Mr. Byrd, for the reasons Presented above, here by respectfully moves this court to issue an order for the taking of discovery in the above referenced case as enumerated, begging leave to expand discovery based on the facts of discovery tendered Mr. Byrd or in the alternative dismissing the motion for summary judgment setting the matter for trial.

Respectfully submitted this 4<sup>th</sup> day of December, 2017

*Lewis E. Byrd III*

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